

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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**Case No. A-6410
APPEAL OF JOSHUA CASTLEMAN, LOIS N. WEINBERG, and RAJNI JOSHI**

OPINION OF THE BOARD

(Hearing held June 19, 2013)
(Effective Date of Opinion: August 5, 2013)

Case No. A-6410 is an administrative appeal filed by Joshua Castleman, Lois N. Weinberg, and Rajni Joshi (the "Appellants") from the action taken by the Montgomery County Historic Preservation Commission (the "HPC") at their March 13, 2013, hearing, memorialized in a written decision issued March 28, 2013, and a second dated May 21, 14, 2013, approving in part and denying in part Historic Area Work Permit No. 612302. The Appellants had requested approval to replace 35 windows in their home. The HPC approved replacement of 11 windows on the east (right) elevation, three (3) windows on the west (left) elevation, and five (5) windows on the north (rear) elevation. The HPC denied approval for the replacement of four (4) windows on the south (front) elevation, and 12 windows on the west (left) elevation. The subject property is located at 500 Tulip Avenue, Takoma Park, Maryland 20912 (the "Property"), in the R-60 zone.

Pursuant to Sections 24A-7(h), 2-112, and 2A-1 et seq. of the Montgomery County Code, the Board held a public hearing on the appeal on June 19, 2013. The Appellants appeared pro se. Associate County Attorney Terri Jones represented Montgomery County.

Decision of the Board: Administrative appeal GRANTED in part and DENIED in part.

FINDINGS OF FACT

The Board finds by a preponderance of the evidence that:

1. The Property, known as 500 Tulip Avenue, Takoma Park, Maryland, contains a Four-Square-Craftsman style house, dating to 1920, and is a Contributing Resource in the Takoma Park Historic District (the "District"). See Exhibit 7, page 59.

2. On September 19, 2012, the Appellants filed an application for Historic Area Work Permit ("HAWP") No. 612302. The Appellants requested permission to remove and replace 35 original windows, 18 on the first floor and 17 on the second floor.

3. On January 2, 2013, HPC staff issued their report which recommended that the HPC deny the application. See Exhibit 7, page 97-106. On January 9, 2013, the HPC held a hearing on this proposal, at which it appeared that the Commission would deny the application. Instead of receiving a denial, the Appellants opted to withdraw their application, continue to work with HPC staff, and submit a revised proposal at a later date. See Exhibit 7, pages 242-314.

4. On March 6, 2013, HPC staff issued a second report (reflecting the revised proposal), and recommended approval of the HAWP provided the following nine (9) windows were preserved: the four (4) windows on the south (front) elevation; the three (3) windows on the first story, west (left) elevation, that comprise the shed bay feature; and the two (2) windows on the first story, west (left) elevation, that are immediately to the right of the shed bay feature. See Exhibit 7, page 315.

5. On March 13, 2013, the HPC held a second hearing on the revised proposal. See Exhibit 7, pages 352-401. At that meeting, the HPC voted to grant the HAWP provided that the nine windows described in the second staff report were retained, plus seven (7) additional windows which are located on the west (left) elevation, to the right of the downspout (five (5) additional windows on the second floor of the west elevation, two (2) additional windows on the first floor, for a total of 16 windows retained – four (4) on the south (front) elevation and 12 on the west (left) elevation). See Exhibit 7, pages 407-8. The HPC issued written decisions reflecting their decision to approve Historic Area Work Permit No. 612302 in part and deny it in part on March 28, 2013, and May 21, 2013. See Exhibit 3(a) and Exhibit 7, pages 482-490. This appeal was timely filed April 4, 2013. See Exhibit 1.

6. Mr. Joshua Silver has worked as a Senior Planner with the Montgomery County Planning Department for the past seven years. He testified that his primary role is to act as the HPC's professional staff for review of HAWP applications. Mr. Silver testified that he is familiar with the Takoma Park Historic District, and that he is familiar with the subject Property, located at 500 Tulip Avenue. Indeed, it was Mr. Silver who wrote both HPC staff reports pertaining to this Property. Mr. Silver testified that the photographs in the record at Exhibit 7, pages 491-503, show the orientation of this house, which he noted is on a corner lot. Mr. Silver testified that the side of the house is on Spruce Street.

Mr. Silver testified that the subject Property is a Contributing Resource in the Takoma Park Historic District. He read a description of "Contributing Resources" from the Approved and Adopted Amendment to the Master Plan for Historic Preservation in Montgomery County, Maryland: Takoma Park Historic District & Carroll Manor/Douglas House, dated August 1992 (the "Guidelines") into the record, noting that Contributing Resources "are more important to the overall character of the district and the streetscape due to their size, scale, and architectural character, rather than for their particular architectural features." See Exhibit 7, page 33. Mr. Silver testified that Contributing Resources should receive more lenient design review than Outstanding Resources. He

read three of the nine factors that should be considered in reviewing HAWPs for Contributing Resources into the record:

- all exterior alterations, including those to architectural features and details, should be generally consistent with the predominant architectural style and period of the resource and should preserve the predominant architectural features of the resource; exact replication of existing details and features is, however, not required
- minor alterations to areas that do not directly front on a public right-of-way—such as vents, metal stovepipes, air conditioners, fences, skylights, etc.—should be allowed as a matter of course; alterations to areas that do not directly front on a public right-of-way which involve the replacement of or damage to original ornamental or architectural features are discouraged but may be considered and approved on a case-by-case basis
- original size and shape of window and door openings should be maintained, where feasible

See Exhibit 7, page 34.

Mr. Silver testified that pursuant to Section 24A-6 of the County Code, a HAWP is required for the replacement of windows. He described the review and approval process for HAWP applications as involving the criteria in Section 24A-8 of the County Code, the Secretary of the Interior's Standards and Guidelines, pertinent guidance in the applicable Master Plan (here, the Takoma Park "Guidelines"), and pertinent guidance in any historic site- or historic district-specific studies. He testified that he had reviewed this HAWP application, and that Chapter 24A does not address windows. He stated that the Guidelines do address alterations to existing structures:

... In reviewing HAWP applications it is important for the Historic Preservation Commission to recognize the eclecticism, creativity, and diversity of design in Takoma Park—features which contribute greatly to the town's unique architectural character and sense of community.

At the same time, it is essential to protect and preserve the features of Takoma Park's built environment which make it of architectural and historical significance to the heritage of Montgomery County.

* * * * *

There are two very general, broad planning and design concepts which apply to all categories. These are:

- the design review emphasis will be restricted to changes that are at all visible from the public right-of-way, irrespective of landscaping or vegetation (it is expected that the majority of new additions will be reviewed for their impact on the overall district), and,
- the importance of assuring that additions and other design changes to existing structures act to reinforce and continue existing

streetscape, landscape, and building patterns rather than to impair the character of the historic district.

See Exhibit 7, pages 31-32. Mr. Silver testified that all of the windows that the Appellants propose to replace are visible from the public right-of-way. He testified that the Appellants submitted their application on September 19, 2012, asking to replace 35 6/1 true divided light windows with 35 6/1 simulated divided light windows. Mr. Silver testified that the staff first considered this in January, 2013, and then considered it again on March 13, 2013. He testified that the existing windows are all wood, 6/1, true divided light, double hung windows. He testified that some of the windows are grouped, some are paired, and some are single. He testified that there is a bay feature on the left elevation.

Mr. Silver testified that at the first hearing, there was public testimony from Lorraine Pearsall, who felt that the windows could be repaired and the lead abated. Ms. Pearsall is a long-time resident of Takoma Park, Vice President of Historic Takoma, and the President of Montgomery Preservation. See Exhibit 7, page 296.

Mr. Silver testified that in connection with the first staff report, he had provided a copy of Preservation Brief #17. See Exhibit 7, pages 409-420. Mr. Silver testified that this document establishes that there are federal resources available which address architectural character. He testified that this Preservation Brief also includes language which states that a building's character can be irreversibly damaged or changed, for example, by changes to the window sash. See Exhibit 7, page 409. Mr. Silver testified that he also provided Preservation Brief #37. See Exhibit 7, page 421-436. He testified that he included this Preservation Brief because it shows that there are federal resources for reducing lead paint in historic buildings. Mr. Silver testified that he included the Secretary of the Interior's Guidance Standards regarding windows. See Exhibit 7, pages 4-7. He testified that the HPC is required to consider the Secretary of the Interior's Standards. Mr. Silver testified that he included EPA's "Steps to Lead Safe Renovation, Repair and Painting," which he testified discusses how to do repairs and rehabilitation in a lead-safe environment. See Exhibit 7, pages 437-470. He testified that with the second staff report, he included Chapter 18 of a HUD publication entitled "Lead Hazard Control and Historic Preservation." He testified that this document makes clear that preservation is preferred over replacement when the less aggressive method is allowed. See Exhibit 7, pages 471-481.

Mr. Silver testified that the second HPC staff report recommended that the HAWP be approved with conditions. He testified that staff had recommended in the second report that the four (4) windows on the front elevation be preserved, and that five (5) of the windows on the first floor of the left elevation, including three (3) in the bay feature and the two (2) windows to the right of that feature, be preserved. He testified that staff chose to preserve these particular windows because they were predominant architectural features, which the Takoma Park Guidelines indicate should be preserved in Contributing Resources. He testified that the bay feature is a predominant architectural feature and that the windows to the right of that feature are closest to the right-of-way; he testified that the front elevation is always defining. Thus he testified that staff had concluded that nine (9) of the windows should be restored instead of being replaced. He testified that he had discussed the staff's recommendation with the Appellants prior to the second HPC hearing, and that they were willing to accept it. He said that at the hearing, the HPC added

additional windows to the list of those that needed to be preserved, including those on the front elevation, but also a total of 12 windows on the left elevation (first and second story). See Exhibit 7, page 407. He testified that the HPC did not require that the windows on the left elevation that are located on what is thought to be a rear addition (beyond the downspout) be retained. He testified that the HPC voted to allow replacement of all windows on the rear and right elevations, per staff's recommendation. Mr. Silver testified that the rear and right elevations are less visible from the right-of-way than the front and west elevations, and described these elevations as secondary elevations. He noted that the house to the right of the subject Property is very close to the house on the subject Property, limiting the view between the houses.

Mr. Silver testified that he prepared the March 28, 2013, Memorandum to DPS conveying the HPC's decision. See Exhibit 7, page 403. He testified that he also prepared the May 21, 2013, HPC Decision and Order, with Findings of Fact (Exhibit 7, pages 482-488) and Conclusions of Law (Exhibit 7, pages 488-489). He testified that after the March 13, 2013, HPC meeting, he spoke with Appellant Castleman about the decision and options for appeal.

On cross-examination, Mr. Silver testified that when the district-specific and national guidelines are inconsistent, the district-specific guidance takes precedence. When asked why staff found only some of the windows on the left elevation to be character-defining, Mr. Silver testified that Contributing Resources are usually mid-block, and thus that their side elevations are less visible from the right-of-way. He testified that staff did not feel that the windows that they said could be replaced were predominant architectural features of this Craftsman-style resource. He testified that the windows that staff said must be preserved were predominant architectural features, and noted that the Property is a corner lot and is highly visible. He testified that the window sashes in the shed bay feature were a part of that feature and should be preserved. Mr. Silver testified that the HPC had found that the proposed (replacement) window sashes were consistent with the predominant architectural style of this resource.

Mr. Silver testified on cross-examination that neither the Secretary of the Interior's Standards nor Preservation Brief #17 mention lead paint. When asked if replacing the sashes would irreversibly change the character of this house, Mr. Silver testified that it had the potential to irreversibly damage the predominant architectural features of this Property. When asked on cross-examination if the proposed replacement of the window sashes would affect the architectural character of this resource according to the questions listed under "3. Openings," in "The Architectural Character Checklist/Questionnaire" set forth in Preservation Brief #17 (Exhibit 7, page 419), Mr. Silver testified that HPC staff and the HPC do not use this Checklist/Questionnaire in making their decision.

Referencing Preservation Brief #37, Appellant Castleman stated that the version of this Brief cited in the second staff report and in the HPC's Decision and Order are no longer available, and are under revision to reflect current federal law. He noted that this was the only federal document cited that referenced lead. He said that the version currently posted on the web is very general. See Exhibit 10. Mr. Silver testified that these Briefs are always being updated, and that the version cited in the staff report and Decision were available when those documents were prepared. Mr. Castleman stated that the HPC Decision and Order states that Preservation Brief #37 "establishes the premise that historic

housing can be made lead-safe for children without removing significant decorative features and finishes, or architectural trim work that may contribute to a building's historical character." When asked if Brief #37 establishes that premise housing can be made lead-safe, or whether the premise of the Brief was that housing could be made lead-safe, Mr. Silver testified that the Brief provides ways of reducing lead paint hazards in historic housing.

Mr. Silver testified on cross-examination that at the March hearing, Appellant Castleman had stated that he understood why staff had proposed retaining the windows that they had proposed to retain, but that his preference would be to replace those windows. In response to a Board assertion that the Takoma Park Guidelines emphasized size, scale and character more than architectural features, and a question whether windows were architectural features, Mr. Silver testified that everything is reviewed on a case-by-case basis. He testified that this resource is a particular architectural style: Craftsman style; that the HPC needed to look at what was visible from the right-of-way; and that the HPC needed to look at features of the architectural style, including their size, scale and character. When asked by a Board member about the impact of the proposed changes on the streetscape, Mr. Silver testified that that is subject to interpretation, but that the new windows would change the daylight openings, and that there would be changes to the window jambs which would decrease the net opening size of the windows. He also noted that the proposed replacement windows were simulated divided-light, not true divided-light windows. When Mr. Silver testified that the size and shape of the windows openings would be changed slightly, Appellant Castleman stated that the proposed replacement windows actually resulted in a slight increase in the light area and stated that he did not think that the public would notice this, noting that the proposed windows would decrease the vertical light dimension by 1/8 of an inch and increase the horizontal light dimension by half an inch.¹ Mr. Silver then testified that Preservation Brief #17 says that the replacement of sashes can irreversibly change the character of a resource. He noted that clearly with respect to some of the windows, he had determined that the replacement of the sashes would not do this.

In response to a Board question, Mr. Silver testified that the Takoma Park Guidelines do not address health hazards. He testified that "necessary" as used in Section 24A-8(b)(4) of the County Code (stating that a HAWP should be issued if "[t]he proposal is necessary in order that unsafe conditions or health hazards be remedied") means that one has to consider whether there are methods other than replacement to reduce the lead risk. He then testified that it appears, based on the technical guidance, that it is not necessary to replace these windows in order to abate the lead. He testified that one should consider Chapter 18 of the HUD guidelines when deciding which method to choose to abate the lead. See Exhibit 7, pages 471-481. He testified that he did not find that replacement was necessary to remedy the alleged health hazard. When asked by the Board to respond to Appellant Castleman's assertion that he is entitled to choose the lead abatement method that is best for his family, Mr. Silver agreed with a Board characterization of the HPC's position as being that the fact that a house is historic limits the homeowner's ability to choose how best to abate risks to his family.

¹ Appellant Castleman also noted that he was not proposing to replace the window jambs, but rather was proposing to insert jamb liners. He said that they would be removing the window stops on the inside.

In response to a Board question noting that a lot of guidelines had been referenced, and asking which actually apply, Mr. Silver testified that Chapter 24A of the County Code, the Secretary of the Interior's Standards, and the Takoma Park Guidelines actually apply; he testified that the EPA guidelines and Chapter 18 of the HUD guidelines are simply issuances that can help people address lead paint situations.

Finally, on cross-examination, Mr. Silver testified that he was not an expert on lead paint. When asked if all abatement methods protect the inhabitants of a home to the same extent, he testified that many variables could influence that. He stated that in terms of level of protection, the HPC uses the EPA high level for a lead-safe environment to determine whether protection is needed.

7. HPC Commissioner William Kirwan testified for the County. Mr. Kirwan testified that he is an architect, that he has worked in numerous historic districts, and that he has been a member of the HPC since 2009. He stated that he was present for both of the Appellants' hearings before the HPC. He testified that he is familiar with the Takoma Park Historic District and with the subject Property. He said that he had personally looked at the windows on this Contributing Resource.

Mr. Kirwan testified that at the January 9, 2013, hearing, he asked questions about the testing of the lead paint samples. He testified that he also wanted a condition assessment. He stated that he believed the windows should be preserved. Mr. Kirwan testified that at the first hearing, he was concerned about the reduced size of the sash openings.²

Mr. Kirwan testified that he recalled the March 13, 2013, hearing as well. He testified that he made the motion to retain the windows on both street-facing elevations (front and left/rear), stating that given their visibility from the right-of-way, he thought this was important. He testified that the windows on the rear and right/east elevation had an incidental impact. Mr. Kirwan testified that the HPC Decision and Order reflects the Commission's decision, and that the March 28, 2013, Memorandum in the record at Exhibit 7, page 403 accurately reflects his motion. Mr. Kirwan testified that the windows on the front elevation should be retained because the Takoma Park Guidelines discuss which alterations are discouraged, and indicate that alterations facing a public right-of-way should be held to a higher standard.³ He noted that the Guidelines also indicate that the original size and shape of window and door openings should be maintained where feasible. See Exhibit 7, page 34. Finally, he noted that per the Guidelines, new construction in Takoma Park should consider the elements that define the streetscape, including "patterns of openings in facades, especially doors and windows, which provide a sense of residential

² The Board notes here that the Appellants proposed using different replacement windows at the first and second hearings.

³ Mr. Kirwan indicated that in making this statement, he was referencing the second factor that is to be considered when reviewing HAWPs for Contributing Resources, which provides that "minor alterations to areas that do not directly front on a public right-of-way—such as vents, metal stovepipes, air conditioners, fences, skylights, etc.—should be allowed as a matter of course; alterations to areas that do not directly front on a public right-of-way which involve the replacement of or damage to original ornamental or architectural features are discouraged but may be considered and approved on a case-by-case basis." See Exhibit 7, page 34.

scale and rhythm along the street." See Exhibit 7, page 36. Mr. Kirwan testified that the Secretary of the Interior's Standards also emphasize the retention of windows, and that this is not inconsistent with the Takoma Park Guidelines.

Mr. Kirwan testified that because no sample paint removal data was submitted, he could not conclude that replacement of these windows was necessary to remedy a health hazard. He noted that the Boggs report said that rehabilitation "may" not remove the lead hazard, not that it "will" not remove the lead hazard. He testified that replacement of windows on the south and west facades of the historic mass did not meet the criteria for the issuance of a HAWP in Section 24A-8 of the County Code, and that replacement of these windows would be inconsistent with the preservation of the historic district. He testified that replacement of the windows on the east and north elevations, and on the addition, was acceptable under Section 24A-8.

Mr. Kirwan testified that he had reviewed the information submitted by the Appellants in their pre-hearing statement. He testified that some of this is new material, and that all of these documents were not available to the HPC, although they may have been referenced in materials submitted to the HPC. He then testified that this new information would not have changed his motion with respect to this HAWP.

When asked, on cross-examination, if replacement of all 35 windows would render the subject Property Non-Contributing, Mr. Kirwan testified that he could not answer that question because the answer would depend on many factors; he then noted that the proposal did make slight changes to the daylight openings, and that the fact that the windows were replaced means that they are changed. When asked if a 1/8th inch change in size would contribute to his motion to deny replacement of some of these windows, Mr. Kirwan testified that this was part of the reason for his motion, that the change in size raised questions for him about the alteration of important architectural features. When asked if the "patterns of openings in facades" were being changed, a reference to one of the elements that define the streetscape and building patterns in Takoma Park (see Exhibit 7, page 36), Mr. Kirwan testified that doors and windows define the streetscape and building patterns, and that the proposed window replacement does change these patterns and affect the streetscape. Mr. Kirwan then explained that "openings" refers to both the opening itself and to the element within that opening.

Appellant Castleman then asked Mr. Kirwan a number of questions relating to the standards for reviewing HAWPs for Contributing Resources in the Takoma Park Historic District. See Exhibit 7, page 34. When asked if the proposed change to the sash was "generally consistent with the predominant architectural style ... of the resource," Mr. Kirwan testified that the changes to the two primary, street-facing facades were not consistent. When asked to address that factor which states that "exact replication of existing details and features is ... not required," Mr. Kirwan testified that the HPC had made that determination on other facades of this house. This in turn caused the Appellant to question how the same sash could be consistent with the architectural style and period on some facades but not on others, to which Mr. Kirwan replied that it depended on the importance of the façade, citing the visibility of the various facades from the right-of-way. When asked on cross-examination if the proposed window replacement was a "minor alteration," Mr. Kirwan testified that it could be on some facades. When asked if storm windows were consistent with the original predominant architectural style and period, Mr.

Kirwan testified that they were because they could be removed and because they protect the original windows.

In response to an assertion by Appellant Castleman (referencing Section 24A-8(b)(4)) that a health hazard should be interpreted to mean a risk of harm occurring, and a question as to whether a situation that might cause harm should be considered a hazard, Mr. Kirwan responded that he did not know the criteria for constituting hazards. When asked what sort of lead testing, stripping and samples would suffice to demonstrate to the HPC that the lead paint in this house posed a health hazard, Mr. Kirwan testified that if the Appellants provided samples which showed that the lead levels were still too high after abatement, the HPC would allow them to replace the windows, adding that the HPC wanted some evidence that the abatement methods available to the Appellants would not work. He later elaborated that the HPC was looking for a few areas to be stripped and then tested immediately afterwards, to which Appellant Castleman responded that his concern, and the concern in the HUD guidelines, was about lead dust over time. Mr. Kirwan testified that the HPC would take this into consideration.

In response to a Board question asking what he considered to be the friction surfaces of a double-hung window, Mr. Kirwan testified that the edge of the sash and portions of the front and back of the sash which rub against the stop are considered friction surfaces. He explained that a stop is what keeps the window from falling out. He testified that the parting stops were also friction surfaces, and that if the Appellants had received a HAWP for restoration, they may have been allowed to replace the parting stops and beams because they are not visible. When asked by the Board what jamb liners do, Mr. Kirwan testified that they are the tracks for the sashes to run up and down. He noted that the lower part of the jamb liner is visible to the exterior, and testified that jamb liners do not reduce friction on the sash.

In response to a Board question asking if the HPC's main concern with the windows on the street-facing (front and left/west) elevations was the size and shape of the windows, Mr. Kirwan testified that the Appellants had not provided sufficient evidence to show that these windows should be replaced, and that changes to the size, glazing and details of these windows would be noticeable from the street. When asked by a Board member if he recalled approving any cases for window replacement because of lead paint, Mr. Kirwan testified that he did not recall such a case during his tenure with the HPC.

8. Appellant Castleman presented a brief history of this matter and summary of the process he and the other Appellants⁴ had followed in attempting to get approval to replace their windows. He testified that he, his wife and their two sons moved into the house in August, 2012. On August 21, 2012, they had Boggs Environmental Consultants inspect their home for lead paint. He testified that Boggs found extremely high levels of lead dust, up to 14 times higher than the maximum level allowed in Maryland. He testified that Boggs assessed and documented the lead hazards at their home, and recommended replacement of all their windows. See Exhibit 8, pages 3-62. He testified that the Boggs

⁴ Although for the purposes of simplicity, the Board's decision will often refer to Mr. Castleman as if he were the sole owner or occupant of this Property, the Board recognizes that the other Appellants also have an ownership and occupancy interest in the Property. Appellant Weinberg will be living in the second story of this home, where she will care for Appellant Castleman's two sons.

report notes that removal and replacement of the windows provides for total elimination of the lead, whereas stripping may leave residual lead and, per the Boggs report, "is generally unsatisfactory for friction surfaces." See Exhibit 8, page 17. Mr. Castleman testified that two other lead specialists had also recommended replacement.

Mr. Castleman testified that his younger son is two years old. He testified that because of the danger posed by the lead, his family has not opened the windows in their house, except for the lead paint testing, since they moved into the house in August 2012. He testified that replacement of the sashes will allow them to abate this danger.

Mr. Castleman testified that he had worked with HPC staff for months to make this HAWP proposal viable. He testified that after the January hearing, based on guidance from HPC staff, they changed the windows they were proposing, and hired a historic window specialist to do an inventory of their windows and to recommend how best to address the lead paint problem. He testified that they investigated the Peel Away lead paint removal system. He testified that at the conclusion of these efforts, HPC staff recommended allowing replacement of 25 windows and retention of nine (9). He testified that three (3) of the six (6) HPC Commissioners sitting at the March hearing agreed with staff, but that ultimately, the HPC voted to require the retention of 19 windows. Mr. Castleman testified that this has been an expensive and time-consuming process, and that he and the other Appellants remain concerned about the lead.

Mr. Castleman testified that the Appellants' HAWP proposal meets both Section 24A-8(b)(2) and Section 24A-8(b)(4) of the County Code, and thus should be granted. With respect to Section 24A-8(b)(4), Mr. Castleman testified that a health hazard is a hazard to the health of those exposed. He clarified that it does not mean definite harm. He testified that this Section says that a HAWP should be granted where a project is necessary to avoid a health hazard. He testified that in 2012, the Centers for Disease Control and Prevention lowered the threshold blood lead levels that require monitoring from 10 micrograms per deciliter to 5 micrograms. See Exhibit 9, Attachments 3 and 4 (CDC Info Sheet for Parents and a Report of the Advisory Committee on Childhood Lead Poisoning Prevention, which was the basis for lowering the monitoring levels). Mr. Castleman read the first paragraph from the Report (Exhibit 9, Attachment 4) into the record:

Based on a growing body of studies concluding that blood lead levels (BLLs) <10 micrograms/dL harm children, the Centers for Disease Control and Prevention (CDC) Advisory Committee on Childhood Lead Poisoning Prevention (ACCLPP) recommends elimination of the term "blood lead level of concern". This recommendation is based on the weight of evidence that includes studies with a large number and diverse group of children with low BLLs and associated IQ deficits. Effect at BLLs <10 micrograms/dL are also reported for other behavioral domains, particularly attention-related behaviors and academic achievement. New findings suggest that the adverse health effect of BLLs less than 10 micrograms/dL in children extend beyond cognitive function to include cardiovascular, immunological, and endocrine effects. Additionally, such effects do not appear to be confined to lower socioeconomic status populations. Therefore, the absence of an identified BLL without deleterious effects combined with the evidence that these effects, in the absence of other interventions, appear to be irreversible, underscores the critical importance of primary prevention.

See Exhibit 9, Attachment 4. He asserted that this paragraph explains why his HAWP application meets Section 24A-8(b)(4), explaining that even small amounts of lead can have adverse effects, and testifying that one of the lead abatement specialists with whom they had consulted told them that lead ingested from the fingers even one time can lead to lead poisoning. Mr. Castleman testified that they had their window troughs, basement floor and soil tested, and that all were over the clearance levels for lead.

Mr. Castleman testified that Chapter 12 ("Abatement") of the 2012 HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing discusses different abatement options. He testified that this Chapter says that all abatement options leave some lead on the surface and describes the relative safety of various abatement methods; he testified that it also says that replacement is the safest and most effective method. See Exhibit 9, Attachment 1, pages 12, 16, 33, and 39. He testified that Chapter 18 ("Lead Hazard Control in Historic Buildings: How To Do It"), which was cited by the HPC, emphasizes balance. See Exhibit 7, pages 471-481. He testified that as a Contributing (as opposed to an Outstanding) Resource, his home is not a house of great historic significance, and that changing out the window sashes should not be considered an irretrievable loss of materials and craftsmanship. He cited an example from Chapter 12 of the HUD Guidelines that he testified indicates that matching replacement windows do not threaten the historic integrity of a resource. See Exhibit 7, page 347 ("If significant elements are in poor condition and too deteriorated to withstand paint removal, it may be possible to replace these elements with matching new elements without threatening the historic integrity of the element or building. This is particularly applicable to simple double-hung historic wooden window sashes in poor condition. ... [R]eplacement windows should be wood and should match as closely as possible the size, configuration, sash, mullion and muntin profile, pane configuration, and other visual qualities of the historic windows."). Mr. Castleman testified in summary that Chapter 12 of the HUD Guidelines says that lead paint removal can cause a hazard, and Chapter 18 requires balance ("Controlling lead hazards in historic buildings is a balancing act between several important objectives: childhood health, economic feasibility, and historic preservation." See Exhibit 7, page 479).

Mr. Castleman testified that he is concerned about the windows in the kitchen and in the dining room of his home. He testified that the windows in the first floor kitchen are located over the counter and dishwasher. He testified that the kitchen is small, and that there is not a lot of space for food preparation. He testified that he was concerned about lead dust on the counters. He testified that the second floor of the house, where Appellant Weinberg will be living, also has a kitchen with similarly situated windows, and that that was where Appellant Weinberg would be watching his children. He testified that the bay feature is located in the first floor dining room, and that there is no other place in the house to put a dining table. He testified that lead dust could blow onto the table and be ingested. He testified that it is clear from the 2012 HUD Guidelines that the risk of lead poisoning remains after paint removal, and that window replacement is the safest and most effective method to address the lead hazard. He asserted that window replacement is necessary to address these health hazards, and that as parents, he and his wife should have the right to choose the safest method for dealing with this hazard in their home, recognizing that certain guidelines do apply in a historic district.

With respect to Section 24A-8(b)(2), Mr. Castleman testified that this Section is about compatibility ("The proposal is compatible in character and nature with the historical, archeological, architectural or cultural features of the historic site or the historic district in which an historic resource is located and would not be detrimental thereto or to the achievement of the purposes of this chapter;"). He reiterated that his HAWP application only needs to meet Section 24A-8(b)(2) or Section 24A-8(b)(4), not both. Mr. Castleman testified that he had worked with HPC staff and others on this proposal, and had selected 6/1 Hurd windows with the same muntin size as the original windows. He testified that using full replacement windows would have provided a better fit, but would have reduced the pane size. Thus he testified that they proposed using sash kits instead, which would result in a slight increase in the pane area. Mr. Castleman testified that none of the HPC Commissioners expressed concerns with the sash kits.

Mr. Castleman testified that in the instant case, the Takoma Park Guidelines control. He testified that as a Contributing Resource, the Guidelines state that his home is entitled to more lenient design review, but that changes should respect the predominant architectural style. See Exhibit 7, page 33. He testified that the proposed project involves very small changes to the rails and panes; he testified that there will no longer be a need for storm windows. He testified that the Guidelines clearly emphasize leniency with respect to Contributing Resources, and that close scrutiny and exact replication are not required. He testified that the sash is the only element of the window that is being replaced. He testified that HPC Commissioner Treseder had stated that Takoma Park allows the replacement of windows. See Exhibit 7, pages 303 (lines 8-15) and 397, line 11, through page 398, line 1. He reiterated his belief that the HAWP application meets both Section 24A-8(b)(2) and Section 24A-8(b)(4).

Regarding Ms. Pearsall, Mr. Castleman testified that the HPC's Decision and Order mentions her; he testified that they had invited her come over to examine their windows, but that she did not accept their invitation.

Mr. Castleman testified that the reasons cited by the HPC for denying this HAWP do not add up. He testified that the Decision refers to three (3) national documents—the Secretary of the Interior's Standards for Rehabilitation, Preservation Brief #17, and Preservation Brief #37. He testified that the Decision also cites the Takoma Park Guidelines, and noted that the local Guidelines take precedence where there are inconsistencies. He testified that the Takoma Park Guidelines state that you must use the Secretary of the Interior's Standards for Outstanding Resources, but do not mention the Secretary's Standards in connection with Contributing Resources. See Exhibit 7, pages 32 and 33. He testified that Mr. Silver's testimony at the first hearing on this HAWP seems to support this conclusion. See Exhibit 7, page 264. He testified that one interpretation would be that the Secretary of the Interior's Standards for Rehabilitation, which he noted do not mention lead paint, should not be used when reviewing HAWPs for Contributing Resources in Takoma Park.

Ms. Castleman testified that Preservation Brief #37 is no longer available, but rather is being revised to include new lead paint laws. He testified that the excerpt from the Brief which is currently available does not include a table of abatement options, and stated that there is a question as to whether the information from the old iteration of this Brief should still be considered. Mr. Castleman testified that he believes that this Brief did

not establish the premise that housing could be made lead-safe, but rather that it was based on the premise that housing could be made lead safe. He testified that the fact that Brief #37 is currently being revised undermines the statement that the Brief establishes the premise that housing can be made lead-safe.

Mr. Castleman testified that Preservation Brief #17, concerning architectural character, was written in 1988 and does not mention lead paint. He testified that he read the architectural character checklist questionnaire, and that the construction proposed by this HAWP did not change the answers to any of those questions. He allowed that perhaps the windows on the front of the house were on a more important façade.

Mr. Castleman testified that three (3) HPC Commissioners initially voted for the HPC staff recommendation in this case. He testified that the Commissioners who voted against the staff recommendation gave a number of reasons, as follows. He testified that Commissioner Miles began both the January and March hearings by recounting her experience with her own daughter and lead paint. See Exhibit 7, pages 312 and 385. He testified that he was not sure that the manner in which Ms. Miles managed her case should have any bearing on the way in which he and his family chose to manage theirs, noting that he was glad that things worked out for her. He noted that regarding the kitchen windows, Ms. Miles had suggested that they simply never open the kitchen windows. Again, Mr. Castleman testified that he was not sure that her not opening windows should affect his ability to open the windows in his home. Regarding the reasonable level of risk, Mr. Castleman testified that Commissioner Miles was of the opinion that you did not have to abate all risks, but rather that there was an acceptable level of risk. See Exhibit 7, page 392. Mr. Castleman pointed out that the HUD Guidelines say that a risk can continue after abatement, that stripping should be avoided if possible, and that replacement is the best option. He questioned what the basis for Ms. Miles' determination was, and who should make that determination. When asked by a Board member if Maryland didn't establish the level of acceptable risk when they set the clearance levels, Mr. Castleman asked how you know when something is safe. He then asked what the value of the sash is to this Contributing Resource, and how one was supposed to weigh that against a documented health hazard or possible hazard. He stated that this is why we have federal guidelines on lead - to establish what is safe. Mr. Castleman testified that both HUD and Commissioner Balgooy indicated that the presence of lead can vary depending on the window and varies over time. He testified that Mr. Balgooy had reported that one window in a rental home he is associated with keeps coming back with lead in it, despite abatement. See Exhibit 7, pages 392-393.

Mr. Castleman testified that Commissioners Kirwan and Miles both gave the lack of empirical evidence as the reason for their denial. He testified that it is challenging for him and the other Appellants to understand exactly what is being asked for. He testified that they had followed up with Mr. Silver. Mr. Castleman testified that he thinks that the HPC Commissioners want two (2) kinds of evidence. First, he testified that they want evidence that the windows are the source of the lead in the home. He cited testimony by Ms. Miles that the lead may have been trampled into the house from the soil outside. See Exhibit 7, page 386. Mr. Castleman then testified that the Boggs' report indicated that the windows were the source of the lead, finding through use of X-ray fluorescence that there was lead in every window, and that the troughs had between 1,300 and 5,800 micrograms.

He testified that the results of this report clearly indicated to him that the windows were the source of the lead, but that there could also have been lead elsewhere.

When asked by the Board if the HPC's request for a window inventory was for an inventory of window condition or of lead paint levels, Mr. Castleman testified that he had ultimately identified a historic window specialist, approved by HPC staff, to assess the condition of the windows. He then testified that had the windows been deteriorated beyond repair, the HPC would have allowed replacement. He noted that none of the windows were deteriorated beyond repair, and that this was not the basis for their appeal.

Mr. Castleman testified that the second kind of evidence the HPC Commissioners were looking for was evidence that stripping the lead paint would not work. He testified that Commissioner Kirwan testified at the March hearing that he needed evidence that abatement would not work ("We don't have any empirical evidence in front of use that tells us that abatement will not solve the problem of lead on the windows, so I'm not comfortable basing a decision on the lead paint issue.") See Exhibit 7, page 380. Mr. Castleman testified that he submitted letters from two (2) lead abatement companies that recommended replacement, noting that one of the companies also made statements about the limitations of paint stripping; he testified that he had also submitted a report from Boggs which recommended replacement and indicated that for friction surfaces, abatement is sometimes not effective. He testified that after the March hearing, he asked Mr. Silver what they could provide to demonstrate that abatement would not work, and that Mr. Silver replied that he was not sure, but that they could strip the windows and then test for lead every six (6) months. Mr. Castleman then stated that the idea of stripping and then testing every six (6) to 12 months would indicate whether this form of abatement was working over time, but could expose his family to the very lead that they were seeking to avoid. See Chapter 12 of the HUD Guidelines. He then testified that lead dust is generated by opening and closing the windows. He stated that if they discovered lead dust after 12 months, they could reapply for a HAWP, but would have exposed themselves to risk over that time period. He testified that this is why there are federal guidelines which say that paint removal should be avoided if possible.

Mr. Castleman testified that the HPC was also concerned about precedent, as evidenced by Ms. Miles' statement at the March hearing that every house over which they have jurisdiction has lead, and that she is concerned that "this is an exception that could swallow our rule." See Exhibit 7, page 386. Mr. Castleman testified that this is not a valid reason, and that their HAWP application did not propose removing all lead paint, noting that the baseboards and doors—non-friction surfaces—had been encapsulated, and that they were not proposing to replace all of the window components, only the sashes and jamb liners. He testified that their proposed project strikes a careful balance between the needs of their family and historic preservation. He stated that the March 6, 2013 staff report states that each case is unique, and thus that this case would not set a precedent. See Exhibit 7, page 322. He noted that very few people have applied to the HPC for replacement windows because of lead paint, noting that even after the Elm Street case was published in the local paper, there was not an avalanche of requests for replacement windows. See Exhibit 9, Attachment 5. Mr. Castleman stated that decisions should be based on the applicable guidelines and County Code, not on a concern about precedent.

Mr. Castleman testified that Mr. Kirwan had cited two reasons for denying the proposed HAWP in part. The first was a lack of empirical evidence; the second was that the application did not meet the Takoma Park Guidelines:

What I'm referencing are page 16 of the Takoma Park Guidelines. The statement that says the original size and shape of window and door openings should be maintained where feasible. And also referencing the very first element on that page as well, all exterior alterations with those architectural features and details should be generally consistent with the predominant architectural style and period of the resource and should preserve the predominant architectural features of the resource, exact replication of existing details and features is, however, not required.

I'm also referencing page 18 of the Guidelines which discusses the residential areas. And it says in Takoma Park there are a number of elements which define the streetscape and building patterns. And further, it goes down to say, principal building facades orient to the street, patterns of openings and facades, especially doors and windows, which provide a sense of residential scale and rhythm along the street.

See Exhibit 7, pages 399-400. Referencing this statement, Mr. Castleman testified the size and shape of the openings proposed in this HAWP were as close as they could be to the originals; he testified that none of the Commissioners had questioned this. Mr. Castleman testified that the replacement windows were generally consistent with the predominant architectural style of this resource, and that Mr. Silver had testified to that fact. He questioned how Mr. Kirwan could find the same windows consistent on some facades but not on others. Mr. Castleman suggested that the predominant architectural feature could be the overall style of the windows with the bay shed. He noted that Mr. Treseder had stated that all of the windows could be replaced. See Exhibit 7, page 397. Regarding Mr. Kirwan's statements concerning patterns of openings and facades along a street, Mr. Castleman testified that under the Takoma Park Guidelines, this is an element to be considered in connection with new construction. See Exhibit 7, page 36. He noted that this HAWP application did not change or propose to change any openings or the pattern of those openings. Thus he testified that his application meets all of these Guidelines.

Finally, Mr. Castleman testified that Commissioner Rodriguez was not present at the January hearing, but that Mr. Rodriguez had indicated at the March hearing that he was torn between preserving the windows and addressing the lead paint issue. He testified that Mr. Rodriguez ultimately concluded that Mr. Kirwan's proposal balanced these concerns. Mr. Castleman then questioned how safety can be balanced against preservation, and testified that they should not be given equal weight. He noted that he had worked closely with HPC staff to develop a workable proposal, and asked the Board to grant his HAWP.

On cross-examination, Mr. Castleman testified that the shed bay feature is in the dining room of the house, and that the other two windows are the kitchen windows. Appellant Lois Weinberg, who is a co-owner and will reside on the second floor of the subject Property, testified that her kitchen and dining room were above Mr. Castleman's, but that their order is reversed.

In response to a question asking if he had had his son's blood lead levels tested, Mr. Castleman testified that they were tested in July, and again in September, after they

had lead cleaning done in the basement and on the first floor, and that his son's blood lead levels were not elevated. He then noted that the windows in their home had not been opened at all since they moved in except as needed for an inventory, testing, and measuring in connection with this HAWP. He testified that the disclosure they were given when they purchased the house stated that there was lead paint, but that it was completely encapsulated by multiple layers of latex paint; he stated that that was not entirely true. When asked on cross-examination if he wanted to reduce the lead hazard in his windows to zero, Mr. Castleman testified that there would still be lead in the window sills, and on the window trim and moldings. He testified that those were non-friction surfaces where the lead risk can be managed through cleaning and encapsulation.

With respect to the windows he had already replaced (pursuant to the HPC's Decision and Order), Mr. Castleman testified that he had a lead abatement company do the demolition, removal and containment/abatement work on the window trough, etc., prior to the installation of the new windows instead of having the window company do it. Mr. Castleman testified that he had not had his home retested since that time, stating that he would have that done once he was (hopefully) finished with the other windows. He testified that they clean their home frequently with a HEPA-filtered vacuum and with TSP, and noted that this is an interim control method and that they do not let their sons touch any of the window sills.

When asked on cross-examination if in replacing the windows, he would be removing an original historic feature of the home which would not be able to be put back in, Mr. Castleman agreed that one component of the window was being removed, but, looking at a photograph taken of his home from the sidewalk, he testified that almost everything that you could see would remain the same, except that there would no longer be storm windows. He testified that the bottom rail in the grid would still be wood, and would still be the same dimensions, but would be different (i.e. new) material. Thus he testified that he did not agree that his proposal would irretrievably change the character of the house. He testified that the big white area, the style of the windows, the blue, the trim, and the molding would all remain exactly as they are. He testified that the only things that would be different were the little grid and the little rail, which he testified would still be made of wood and would still be the same dimensions, but would not be made of historic wood.

In response to a Board question, Mr. Castleman testified that he knew his home was historic when he purchased it. He testified in response to another Board question that the windows to the rear of the downspout on the left elevation were located in what was probably a later addition to this house, but that they still have high levels of lead in them. Finally, in response to Board questions asking if he had pictures of the windows he had already replaced, he testified that the installation had just been completed two days earlier, and that the windows still needed to be painted. He testified that they filled the same hole in the wall as the old windows, and that they had the same 6/1 style. He testified that the proposed replacement window sashes are as close as possible to the original sashes.

CONCLUSIONS OF LAW

1. Section 24A-7(h)(1) of the Montgomery County Code provides that:

"Within 30 days after the Commission makes a public decision on an application, an aggrieved party may appeal the Commission's decision to the Board of Appeals, which must review the decision de novo. The Board of Appeals may affirm, modify, or reverse any order or decision of the Commission."

2. Ordinarily, as this Board has previously held, when an appeal from a quasi-judicial body is heard "de novo," the matter is to be tried anew as if it had not been heard before and as if no decision had been previously rendered. In effect, the Board is exercising what amounts to original jurisdiction. For all intents and purposes, it is the first hearing of the case. *Pollard's Towing, Inc. v. Berman's Body Frame & Mech., Inc.*, 137 Md. App. 277, 768 A.2d 131 (2001); *Boehm v. Anne Arundel County*, 54 Md. App. 497, 459 A.2d 590 (1985); *Lohrmann v. Arundel Corp.*, 65 Md. App. 309, 500 A.2d 344 (1985); *Hill v. Baltimore County*, 86 Md. App. 642, 587 A.2d 1155 (1991).

However, the Board is accorded some flexibility in pursuing a "de novo" inquiry. The Maryland courts have stated that the meaning of the term "de novo" with respect to administrative appeals may vary with the subject matter of the review, the function of the agency, or the nature of the remedy. *Boehm*, 459 A.2d at 598. "There are many provisions in Maryland law for what are loosely termed de novo 'appeals.' Some of these appeals are less 'de novo' than others in that the action of the body subject to review retains some vitality and must be considered in the reviewing process." *Lohrmann*, 500 A.2d at 348.

In this case, the function of the Board is not, as it is elsewhere in the Code provided, to "hear" or "decide" the matter "de novo" (see, e.g., appeals from the Sign Review Board, Section 59-F-10.3). Under the Historic Preservation ordinance, rather, the Board's function is to "review the [HPC] decision de novo." We must assume that the County Council meant to use these particular words, and we must give them meaning. In order to review a decision, we must consider the decision.

With respect to the burden of proof, Section 2A-8(d) of the County's Administrative Procedure Act, which governs this proceeding, states unequivocally that "where a governmental agency or an administrative authority is a party, such agency or administrative authority shall have the burden of going forward with the production of evidence at the hearing before the hearing authority." Section 2A-10(b) provides that "all recommendations and/or decisions of the hearing authority shall be based upon and supported by a preponderance of the evidence of record." Consequently, where HPC is a party, it is required to produce evidence to show that its decision is correct. The Appellants may produce evidence to the contrary. The Board's duty is to determine, by a preponderance of the evidence presented by all of the parties, whether the HAWP was correctly granted in part and denied in part.

3. In reviewing an application for an historic area work permit, we look first to the criteria set out in Section 24A-8 of the Montgomery County Code:

"(a) The commission shall instruct the director to deny a permit if it finds, based on the evidence and information presented to or before the commission that the alteration for which the permit is sought would be inappropriate, inconsistent with or detrimental to the preservation, enhancement or ultimate protection of the historic site or historic resource within an historic district, and to the purposes of this chapter.

(b) The commission shall instruct the director to issue a permit, or issue a permit subject to such conditions as are found to be necessary to

insure conformity with the purposes and requirements of this chapter, if it finds that:

(1) The proposal will not substantially alter the exterior features of an historic site or historic resource within an historic district; or

(2) The proposal is compatible in character and nature with the historical, archeological, architectural or cultural features of the historic site or the historic district in which an historic resource is located and would not be detrimental thereto or to the achievement of the purposes of this chapter; or

(3) The proposal would enhance or aid in the protection, preservation and public or private utilization of the historic site or historic resource located within an historic district in a manner compatible with the historical, archeological, architectural or cultural value of the historic site or historic district in which an historic resource is located; or

(4) The proposal is necessary in order that unsafe conditions or health hazards be remedied; or

(5) The proposal is necessary in order that the owner of the subject property not be deprived of reasonable use of the property or suffer undue hardship; or

(6) In balancing the interests of the public in preserving the historic site or historic resource located within an historic district, with the interests of the public from the use and benefit of the alternative proposal, the general public welfare is better served by granting the permit.

(c) It is not the intent of this chapter to limit new construction, alteration or repairs to any 1 period or architectural style.

(d) In the case of an application for work on an historic resource located within an historic district, the commission shall be lenient in its judgment of plans for structures of little historical or design significance or for plans involving new construction, unless such plans would seriously impair the historic or architectural value of surrounding historic resources or would impair the character of the historic district."

We must also consider the criteria for HAWP approvals set out on the HPC's regulations, as codified at Section 24A.01.01.1.5 of the Code of Montgomery County Regulations:

"(a) The Commission shall be guided in their review of Historic Area Work Permit applications by:

(1) The criteria in Section 24A-8.

(2) *The Secretary of the Interior's Standards and Guidelines for Rehabilitation.*

(3) Pertinent guidance in applicable master plans, sector plans, or functional master plans, including categorization of properties in

historic districts by level of significance - if applicable. Such categories will be defined and explained clearly in the applicable plans.

(4) Pertinent guidance in historic site or historic district-specific studies. This includes, but is not limited to, the 1992 Long Range Preservation Plans for Kensington, Clarksburg, Hyattstown, and Boyds.

(b) Where guidance in an applicable master plan, sector plan, or functional master plan is inconsistent with the *Secretary of the Interior's Standards and Guidelines for Rehabilitation*, the master plan guidance shall take precedence."

The pertinent master plan for the Takoma Park Historic District is the "Approved and Adopted Amendment to the Master Plan for Historic Preservation in Montgomery County, Maryland: Takoma Park Historic District & Carroll Manor/Douglas House" dated August 1992 (referred to herein as the "Guidelines"). See Exhibit 7, pages 8 - 96.

The buildings in Takoma Park have been classified into three categories: Outstanding, Contributing, and Non-Contributing or Out-of-Period Resource. The subject Property is a Contributing Resource, which is described as follows:

Contributing resource: A resource which contributes to the overall character of the district and its streetscape, but which is of secondary architectural and historical significance. A resource may be classified as contributing if it is a common or ubiquitous example of an architectural style that is important to the historic district, or if it was an outstanding resource that, while still identifiable as a specific architectural style, has lost some degree of its architectural integrity due to alterations. Contributing resources add to the overall streetscape due to their size, scale, and architectural character.

See Exhibit 7, page 30. As a Contributing Resource, the subject Property is subject to a more lenient level of design review than an Outstanding Resource. The Guidelines state that this design review:

should emphasize the importance of the resource to the overall streetscape and its compatibility with existing patterns rather than focusing on a close scrutiny of architectural detailing. In general, however, changes to Contributing Resources should respect the predominant architectural style of the resource. As stated above, the design review emphasis will be restricted to changes that are *at all visible from the public right-of-way*, irrespective of landscaping or vegetation (it is expected that the majority of new additions will be reviewed for their impact on the overall district).

See Exhibit 7, page 33.

The Guidelines also list some of the factors to be considered in reviewing HAWPs on Contributing Resources:

- all exterior alterations, including those to architectural features and details, should be generally consistent with the predominant architectural style and period of the resource and should preserve the predominant architectural features of the resource;

exact replication of existing details and features is, however, not required

- minor alterations to areas that do not directly front on a public right-of-way—such as vents, metal stovepipes, air conditioners, fences, skylights, etc.—should be allowed as a matter of course; alterations to areas that do not directly front on a public right-of-way which involve the replacement of or damage to original ornamental or architectural features are discouraged but may be considered and approved on a case-by-case basis
- major additions should, where feasible, be placed to the rear of existing structures so that they are less visible from the public right-of-way; additions and alterations to the first floor at the front of a structure are discouraged but are not automatically prohibited
- while additions should be compatible, they are not required to be replicative of earlier architectural styles
- second story additions or expansions should be generally consistent with the predominant architectural style and period of the resource (although structures that have been historically single story can be expanded) and should be appropriate to the surrounding streetscape in terms of scale and massing
- original size and shape of window and door openings should be maintained, where feasible
- some non-original building materials may be acceptable on a case-by-case basis; artificial siding on areas visible from the public right-of-way is discouraged where such materials would replace or damage original building materials that are in good condition
- alterations to features that are not visible at all from the public right-of-way should be allowed as a matter of course
- all changes and additions should respect existing environmental settings, landscaping, and patterns of open space

See Exhibit 7, page 34.

4. With respect to the windows on the front/south elevation of this house, the Board agrees with the HPC and HPC staff that preserving the front elevation windows of this Contributing Resource is of primary importance. The Board adopts staff's findings that under most circumstances, the front elevation of a Contributing Resource is visible from the public right-of-way and contributes most to preserving the architectural character of the resource, and finds that that is the case with the subject Property. Similarly, the Board agrees with and adopts staff's statement that "[r]etention of the character-defining front elevation windows is consistent with the [Takoma Park] Guideline directive 'Contributing Resources add to the overall streetscape due to their size, scale and architectural character.'" See Exhibit 7, page 322. Thus the Board finds that replacement of the window sashes on the

front/south elevation of this house would be inconsistent with the Takoma Park Guidelines and must be denied under Section 24A-8(a) of the County Code, as had been found by the HPC.

5. The Board finds that the proposed HAWP calls for removing wooden, 6/1, true-divided light, double-hung windows and replacing them with wooden, 6/1, simulated-divided light, double-hung windows with a slightly different window component dimension.⁵ The Board finds that per the Takoma Park Guidelines for the review of changes to Contributing Resources, exact replication of the original historic window sashes is not needed as long as the architectural style and features of the sashes are maintained (the Guidelines state that a proposal "should be generally consistent with the predominant architectural style and period of the resource and should preserve the predominant architectural features of the resource, exact replication of existing details and features is, however, not required"). The Board adopts the HPC staff's finding that the materials, design and dimensions of the proposed replacement sashes "closely match the existing window details." See Exhibit 7, page 366. The Board finds that the architectural drawings of the existing windows and the proposed replacement windows also illustrate that the proposed replacement window sashes closely match the existing window sashes. See Exhibit 7, pages 337 and 338.

Having established that the proposed replacement sashes have the same design as, and are very close facsimiles of, the existing window sashes, the Board further finds that the sashes themselves are not predominant architectural features of the left/west, rear/north, and right/east elevations of this Contributing Resource. In support of this, the Board cites the March staff report in which staff notes that the design of the windows is characteristic of the Craftsman style, but goes on to say that "6/1, double-hung, sash windows are a relatively ubiquitous window type in the district" and that these windows "are not of unique design or special craftsmanship." See Exhibit 7, page 321.⁶ The Board notes that the HPC has already approved replacement of the sashes on the rear/north and right/east elevations, and on portions of the left/west elevation, with the proposed sash kits, despite their being visible from the public right-of-way. In addition, the Board notes, per staff testimony at the March hearing, that "the left, right and rear elevations of houses in the historic district are generally considered secondary elevations," that the "right side elevation" of this Property "is within close proximity to the neighboring property, making [it] less visible from the public right-of-way," and that the rear elevation "is not character defining." See Exhibit 7, page 364. Finally, the Board notes, as indicated in testimony and by the staff report, that the size and shape of the existing framed openings and all exterior trim and casing would be protected during the construction and would remain "in situ." See Exhibit 7, page 321. Thus the Board finds that while this HAWP does propose replacement of the window sashes, it does not propose changing the size or pattern of the window openings, and it will preserve all of the exterior architectural trim work around these openings, including the architectural elements of the shed bay feature

⁵ Testimony indicates that the size of the total pane area would be increased by half an inch horizontally and decreased by 1/8 of an inch vertically.

⁶ A similar statement is contained in the January staff report. See Exhibit 7, page 103.

on the left/west elevation. Accordingly, the Board finds that such replacement would be generally consistent with predominant Craftsman architectural style and period of this Resource and would preserve its predominant architectural features.

Based on the foregoing and consistent with the Takoma Park Guidelines, the Board therefore finds that the proposed insertion of new (closely-matched) wooden sashes and liners into the existing window openings, while preserving all exterior trim and casings, would not substantially alter the exterior features of this Contributing Resource and further finds that the proposal is compatible in character and nature with the historical, archaeological, architectural or cultural features of the historic site or the historic district in which an historic resource is located. Thus the Board concludes that the proposed sash replacement kits for these elevations can be approved under both Section 24A-8(b)(1) and Section 24A-8(b)(2) of the County Code.

6. In addition, the Board finds, in balancing the need for historic preservation against the health hazards posed by lead paint, that this HAWP can be granted for the replacement of window sashes on the left/west, right/east and rear/south elevations of this Property pursuant to Section 24A-8(b)(4) of the County Code, which states that the proposal "is necessary in order that unsafe conditions or health hazards be remedied." In support of this finding, the Board notes the following, brought out during the course of this hearing. Chapter 18 of the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (2012 Edition)("Lead-Based Paint and Historic Preservation") states that "Controlling lead hazards in historic buildings is a balancing act between several important objectives: childhood health, economic feasibility, and historic preservation." Mr. Castleman testified that the Centers for Disease Control had recently lowered the monitoring levels for lead in the blood by fifty percent, from 10 micrograms per deciliter to 5 micrograms per deciliter. See Exhibit 9, Attachments 3 and 4. He testified that the lead experts with whom he had consulted had told him that even one exposure in which lead is ingested from the fingertips can result in lead poisoning. He testified that the full text of Preservation Brief #37, which the HPC had considered in making their decision, was no longer available because it was being revised to reflect this new, more stringent guidance from the CDC.

Mr. Castleman testified that the lead levels in his home, as tested by Boggs Environmental Consultants, were up to fourteen times the legal limit in Maryland, and that the source of the lead was lead paint on the windows. He testified that both the Boggs report and Chapter 12 HUD Guidelines ("Abatement") indicate that chemical stripping may leave residual lead and is an unsatisfactory way to abate lead on friction surfaces (such as window sashes) because the friction can result in the release of lead dust over time. See Exhibit 7, pages 121, and 127-128; Exhibit 9, Attachment 1, pages 12-39-40 ("Chemical removal ... is often used in situations where historic preservation requirements apply. However, it may leave lead residue on porous surfaces, which may pose a hazard to resident children in the future. One study demonstrated that windows treated with chemical paint removers had high leaded-dust levels a few months after treatment, even though cleanup and clearance had been conducted properly (Farfel, 1992)."). The Board notes that the

experience of HPC Commissioner Balgooy with a rental property serves to confirm this. See Exhibit 7, pages 392-393.

Mr. Castleman testified that he has an active two-year old son. He testified emphatically that he and his son should not have to live in a house with a potential health hazard (lead dust) when replacement of the sashes and liners, which was recommended by Boggs and two other lead specialists, would eliminate this risk. See Exhibit 7, page 121. The Board agrees, and finds that whereas semi-annual or annual testing may indicate whether stripping or other abatement methods have been effective over time, in the event that such a test were to indicate the continued or renewed presence of lead dust, Mr. Castleman's family would have been exposed to that hazard for an unknown period of time between tests. Given the new, lower levels for lead exposure monitoring, the fact that there is no known way to reverse lead poisoning once it occurs,⁷ and the testimony of Mr. Castleman that even a single exposure can result in lead poisoning, the Board finds that replacement of all of the window sashes in this house, save those on the front elevation which must be preserved for historic preservation reasons previously enumerated, is necessary to remedy the health hazard posed by the lead paint, and thus the Board finds that this portion of the proposed HAWP can be granted under Section 24A-8(b)(4). The Board notes in granting this portion of this HAWP that the fact that this is a Contributing and not an Outstanding Resource and thus is subject to more lenient scrutiny, that only the window sashes were being replaced, that the proposed replacement sashes were nearly identical to the original sashes, and that the historic exterior trim and casings were being preserved, all factored into the Board's decision to allow these replacements for the original sashes.

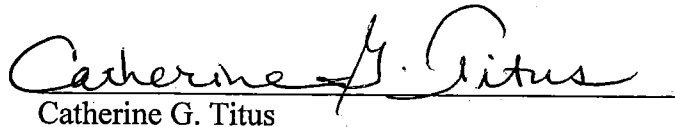
7. Accordingly, by a preponderance of the evidence and for the foregoing reasons, the Board finds that the HPC incorrectly denied the Appellants' HAWP request to install the proposed replacement sash kits in all of the windows on the left/west elevation of this Contributing Resource and that the requested HAWP can be granted with respect to all of the windows on this elevation under Section 24A-8(b)(1), (2) or (4) of the County Code. The Appellants' appeal is therefore **GRANTED** with respect to the 12 windows on the left/west elevation for which this HAWP had previously been denied by the HPC. The Board further finds that the HPC's decision to grant this HAWP with respect to the windows on the right/east and rear/north elevations (and with respect to three (3) windows on the left/west elevation for which replacement sashes had previously been approved) should be **AFFIRMED**, and that in addition to the reasons given by the HPC, the proposed work on those elevations is also permissible under Section 24A-8(b)(4).

In addition, the Board finds that the HPC correctly denied the Appellants' HAWP request to install the proposed replacement sash kits on the front/south elevation of this Resource, for the reasons stated herein, and thus the Appellants' appeal is **DENIED** with respect to the replacement of the window sashes on the front/south elevation.

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

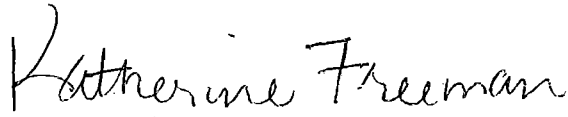
⁷ See Exhibit 9, Attachment 3.

On motions by Member John H. Pentecost, seconded by Member Stanley B. Boyd, with Vice Chair David K. Perdue and Member Carolyn J. Shawaker in agreement, and Chair Catherine G. Titus in opposition, the Board adopted the foregoing Resolution.



Catherine G. Titus
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 5th day of August, 2013.



Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County on accordance with the Maryland Rules of Procedure.